



A New Deal for Renting

Resetting the balance of rights and responsibilities between landlords and tenants

Consultation response from Midland Heart

October 2019

Topline

Midland Heart is comfortable with the abolition of Assured Shorthold Tenancies (ASTs) in the both the social and private sector as it is a way of offering tenants more security and creating stable communities. However, for this to work, reforms must include a clear and straightforward path to possession when there is a legitimate reason.

Key Points

- A dedicated housing court should be established to enable landlords to take faster and more decisive action against tenants who breach their tenancy conditions.
- Tenancy reforms must include a break clause that allows the assured tenancy to be ended swiftly to enable housing associations to continue operating probationary arrangements.
- The mandatory grounds for possession must cover under-occupied social housing to enable the sector to make best use of their stock.
- There should be a separate mandatory ground for possession where a tenant prevents the landlord from accessing the property to maintain legal safety standards.
- Specific legislative provision must be made for tenancies that are intended to be short term such as supported/specialist housing, intermediate market rent and properties with short leases.

Introduction

Midland Heart is dedicated to providing decent, affordable homes combined with excellent services to over 70,000 customers across the Midlands. Founded in 1925, we are a trusted not for profit organisation whose social purpose drives us to reinvest all our surplus back in to our customers, staff and homes.

Our principal activity is the provision of social housing but we also have a portfolio of market rent housing (180 properties) and intermediate market rent properties (270 properties), which are let on the same basis as properties in the private rented sector. Our market rent portfolio is managed by Cygnet Property Management PLC, a wholly owned subsidiary of Midland Heart. Cygnet is a non-charitable business registered with Companies House, which gifts surpluses generated to Midland Heart.

We are contracted to operate housing advice centre services for:

- Newcastle under Lyme Borough Council. The service includes processing homeless applications, allocating temporary/emergency accommodation and advice on housing options in the private rented sector.
- East Northamptonshire Council (for advice services in in Rushden). This includes managing homelessness prevention and allocations.

Our approach to tenancy security

We pride ourselves on being a responsible and fair landlord, offering good quality homes that meet the needs of local communities. We will only seek to evict tenants as a last resort when serious breaches of tenancy have occurred which we have not been able to remedy. Midland Heart makes use of assured shorthold tenancies in the following circumstances:

- Starter tenancies for new tenants (including extension periods)

- As part of the fixed term tenancy regime that we operate for large family housing (4 bedroom or larger)
- Market rented housing
- Intermediate Market Rent properties
- Where we do not hold the freehold to the building and have the lease for a certain number of years.
- When there are immigration issues.

Answers to specific consultation questions

Q1: Do you agree that the abolition of the assured shorthold regime (including the use of section 21 notices) should extend to all users of the Housing Act 1988?

Yes

We are comfortable that the abolition of ASTs should extend to the social rented sector, but do have some concerns on the implications for housing associations.

We issue ASTs to new tenants as starter tenancies for 12 months. After this time, most tenants enjoy security of tenure as they will be issued with a lifetime (assured tenancy). For tenants of properties that are 4 bedroom or more, fixed term tenancies will be issued after the starter tenancy. This allows us to allocate property types that are in high demand to those who really need them. Midland Heart urges ministers to consider a **new mandatory ground** for possession for housing associations, where the property is underoccupied to enable us to make best use of our stock; this can include safeguards to offer suitable alternative accommodation.

Q2: Do you think that fixed terms should have a minimum length?

Yes

If yes, how long should this be?

12 months

Q3: Would you support retaining the ability to include a break clause within a fixed-term tenancy?

Yes

The reforms must recognise the distinct role of the housing association sector and its strong social purpose housing challenging and vulnerable people. The sector widely uses assured shorthold tenancies as starter tenancies to monitor the conduct of the tenancy during a 12 month probationary period. Housing associations can end the starter tenancy through the service of a section 21 notice. We only take this action as a last resort if there are serious tenancy breaches and measures aimed at sustaining the tenancy have failed. Consideration is also given to extending the tenancy to enable the tenancy breaches to be rectified. Tenancy reforms must allow housing associations to continue operating a probationary phase for all new tenants as local authorities currently do through their introductory tenancy regime. During the break clause housing associations should be able to end the assured tenancy swiftly without the need to evidence grounds for possession in court.

We remain unclear on how the break clause is intended to operate in practice. Our understanding is that the break clause will allow landlords (and tenants) to end the tenancy without evidencing grounds for possession in court as agreed contractually.

Questions 4 – 11: Moving into the property, widening the scope of ground 1

We do not have any comments on this aspect of the consultation.

A new ground – selling the property

Q12: We propose that a landlord should have to provide their tenant with prior notice they may seek possession to sell, in order to use this new ground. Do you agree?

No

If no, please explain.

Our view is that this proposal is unnecessary and landlords should only be required to give notice and evidence of their intention to seek possession on this ground when it becomes necessary to do so. Landlords' circumstances may change; we therefore envisage landlords will give notice that they may seek possession to sell for all lettings as a safeguard, even if they have no intention to sell at the time of the letting. This will be counterintuitive as it will make tenants feel insecure at the outset of their tenancy.

Q13: Should the court be required to grant a possession order if the landlord can prove they intend to sell the property (therefore making the new ground 'mandatory')?

Yes

Q14: Should a landlord be able to apply to the court if they wish to use this new ground to sell their property before two years from when the first agreement was signed?

Yes – landlords need the flexibility to be able to sell their property should their circumstances change.

Q15: Is two months an appropriate amount of notice for a landlord to give a tenant, if they intend to use the new ground to sell their property?

Yes

Q16: Not applicable

Rent Arrears

Q17: Should the ground under Schedule 2 concerned with rent arrears be revised so: The landlord can serve a two week notice seeking possession once the tenant has accrued two months' rent arrears.

Yes

The court must grant a possession order if the landlord can prove the tenant still has over one months' arrears outstanding by the time of the hearing.

Yes, if a possession order is requested by the landlord.

The court may use its discretion as to whether to grant a possession order if the arrears are under one month by this time.

Yes, if the circumstances of the case warrant this decision being made.

The court must grant a possession order if the landlord can prove a pattern of behaviour that shows the tenant has built up arrears and paid these down on three previous occasions.

Yes

Our view is that this should be a mandatory ground for possession if there is a pattern of behaviour of accruing arrears and paying this down by the time of the hearing, even if the remaining arrears are less than a months' rent.

Anti-social behaviour

Q18: Should the Government provide guidance on how stronger clauses in tenancy agreements could make it easier to evidence ground 12 in court?

Yes

Our legal system is currently under resourced. It is essential that landlords have effective measures and guidance to deal promptly and effectively with anti social behaviour, including a fully resourced housing court. Since 2010, more than 200 courts have closed and the number of permanent court staff is down 30%. This has increased the time it takes to complete a possession case to an average of 42 weeks. The sheer breadth of issues county courts deal with means housing cases often get postponed in favour of more urgent issues such as safeguarding. For us, it's not uncommon for cases to take up to 18 months.

A dedicated court, run by experts in housing law, could enable providers to take faster and more decisive action against those who cause harm or repeatedly fail to pay rent. Crucially, it could also improve tenants' ability to hold rogue landlords to account.

Q19: As a landlord, what sorts of tenant behaviour are you concerned with?

- Hate incidents
- Harassment and intimidation
- Threatening behaviour or physical violence
- Nuisance (such as parties or loud music)
- Vandalism (such as graffiti) and damage to our property
- Environmental damage (such as littering or fly-tipping)
- Uncontrolled animals

Other: criminality e.g. theft in the localities of properties and/or storing stolen goods, drug cultivation, dealing and usage, prostitution from and around properties, gang related crime, harassment of persons residing in and/or visiting properties and nuisance being caused to persons residing in and/or visiting properties.

Q20: Have you ever used ground 7A in relation to a tenant's anti-social behaviour?

Yes

We have used this ground for approximately 2-3 cases of serious offences being committed in or around our properties, as well as for a case involving breach of an abatement notice.

Q21: Do you think the current evidential threshold for ground 7A is effective in securing possession?

Yes

Q22: Have you ever used ground 14 in relation to a tenant's anti-social behaviour?

Yes

Q23: Do you think the current evidential threshold for ground 14 is effective in securing possession?

Yes

Domestic abuse

Q24: Should this new ground apply to all types of rented accommodation, including the private rented sector?

Yes

Q25: Should a landlord be able to only evict a tenant who has perpetrated domestic abuse, rather than the whole household?

Yes

We are committed to supporting reforms that are more victim focussed and welcome reforms that enable us to only evict the perpetrator where this is appropriate. However, domestic violence is a complex issue and landlords need to have the flexibility to evict either the perpetrator of abuse or the household if this becomes necessary. There may be a propensity for the abuser to return to the property to live, for example, at the request of the victim and/or where the victim is no longer engaging with support. This can result in damage to the property and further abuse to the victim, as well as ongoing disturbance to neighbours. The flexibility allows the landlord to take the most appropriate course of action depending on the circumstances of each individual case.

Q26: In the event of an abusive partner threatening to terminate a tenancy, should additional provisions protect the victim's tenancy rights?

Yes – this will deter the victim from remaining in an abusive relationship for fear of losing their home.

Q27: Should a victim of domestic abuse be able to end a tenancy without the consent of the abuser or to continue the tenancy without the abuser?

Yes

In some instances it can be very difficult to get consent from the abuser to end the tenancy, which can exacerbate the issues between the parties (e.g. accrual of rent arrears). If the abuser wishes to leave or legal action has been taken to prevent them from living at the property, or contacting the victim, then it would be appropriate for the victim to continue the tenancy.

Property Standards

Q28: Would you support amending ground 13 to allow a landlord to gain possession where a tenant prevents them from maintaining legal safety standards?

Yes

Midland Heart advocates this being a **new mandatory ground in relation to repairs and fitness**. We do not support this being tied to ground 13 as the emphasis here is on neglect on the part of the tenant. The landlord should be required to evidence that they have attempted to access the property at reasonable times and with reasonable notice to maintain safety standards. We use possession proceedings as a last resort and attempt to gain access in several different ways e.g. visits, telephone, letters, emails or notices on doors. Through our persistent approach access is achieved in most cases without recourse to legal action.

In 2018 we took legal action on seven cases where there were no access/fire safety concerns, including applications for injunctions. When legal action is taken, this can consume a large amount of time and effort. Furthermore, if a customer still refuses to allow access, despite a court order, there is no current jurisdiction to allow landlords to force entry to ensure the property is safe and to mitigate any unnecessary risks residents are exposed to.

If this is not a mandatory ground, we welcome further measures to facilitate access to properties and enforce resident responsibilities to keep buildings safe. This includes:

- a) establishing housing courts to get a faster, more effective resolution;
- b) providing jurisdiction for landlords to force entry into properties, where it is proportionate and reasonable to do so (with adequate safeguards in place for landlords and tenants).
- c) Extending the legal powers that are available for local authorities to housing associations to enable access by applying for a warrant of entry.

Accelerated possession

Q29: Which of the following could be disposed of without a hearing? (tick all that apply)

1	Prior notice has been given that the landlord, <i>or a member of his family</i> may wish to take the property as their own home.	✓
2	Prior notice has been given that the mortgage lender may wish to repossess the property.	✓
3	Prior notice has been given the property is occupied as a holiday let for a set period.	✓
4	Prior notice has been given the property belongs to an educational establishment and let for a set period.	✓
5	Prior notice has been given to a resident minister that the property may be required by another minister of religion.	✓
6	Reconstruction, demolition or other works need to be carried out, but cannot go ahead with the tenant in situ.	✓
7	The previous tenant has died, with the tenancy passing on to a new tenant who does not have the right to carry on with the tenancy.	✓

7A	The tenant has been convicted of a serious offence in or around the property, against someone living in or around the property, or against the landlord.	✓
7B	A tenant or occupant has been disqualified from occupying the property due to their immigration status.	✓
8	The tenant has significant rent arrears.	X
<i>New</i>	<i>The landlord wishes to sell the property</i>	✓
	Don't know	

Student accommodation

Q30: Should ground 4 be widened to include any landlord who lets to students who attend an educational institution?

Yes

Specialist provisions Question 31 - 36

We do not have any comments on this aspect of the consultation.

Impact and timing of implementing our changes

Q37: How many section 21 notices have you issued in the past two years?

10+

Q38: Of these, how many applications for possession orders have you made to the courts?

10+

Q39: Of these, how many have resulted in a court hearing?

10+

Q40: Taking into account legal fees and loss of income what would you estimate to be the average cost of a single case:

- a) Using the accelerated process
£1,000-4,999
- b) Pursuing the application at a hearing
£1,000-4,999

Q41: How many section 8 notices have you issued in the past two years?

10+

Q42: Of these, how many applications for possession orders have you made to the courts?

10+

Q43: Of these, how many have resulted in a court hearing?

10+

Q44: Are there any other impacts on your business or organisation the Government should consider when finalising its policy?

Yes

If yes, please provide evidence to support this view.

Intermediate Market Rent

Our portfolio includes 270 Intermediate Market Rent (IMR) properties. This rental option enables low income households to save with the expectation that they will be able to progress to some form of purchase within a few years. After entering a six month assured shorthold tenancy, the tenancy is then renewed on a monthly basis. If arrears accrue or the tenant no longer qualifies for the scheme, we will issue a section 21 to end the tenancy. The consultation proposals do not cover the scenario where we may need to terminate the tenancy for reasons other than rent arrears or anti-social behaviour in relation to IMR. If section 21 is repealed, IMR schemes will not be able to continue unless **specific legislative provision** is made for them.

AST Protections

We are pleased the government has acknowledged that there are a number of important protections attached to assured shorthold tenancies and their intention to protect these rights. Midland Heart is keen to emphasise that this protection should avoid duplicating the existing regulatory framework and increasing the regulatory burden on housing associations. We are already a heavily regulated sector in comparison to the private sector.

Properties Leased to Housing Associations

Our portfolio of properties includes some where we only have the lease for a certain number of years, at the end of which it must be restored to the freeholder with vacant possession. In this situation we would need to issue an AST in order to terminate the tenancy once the end of the lease approaches. Again **specific legislative provision** should be made for this scenario.

Properties Linked to Commissioned Services

Assured shorthold tenancies are used for commissioned services such as supported or specialist housing. **Specific legislative provision** would need to be made if section 21 is abolished to manage specific situations such as when the delivery of support is withdrawn necessitating the termination of the tenancy or to manage schemes supporting challenging customers.

Wider impact

Q45: Do you think these proposals will have an impact on homelessness?

Don't know

If yes, please provide evidence to support this view.

It is widely recognised that the loss of private rented accommodation is a leading cause of homelessness. Midland Heart, therefore, supports reforms designed to help make renting more secure, improve standards and increase tenant confidence. We believe that specialist housing courts are the solution to rebalancing the relationship between the tenant and landlord.

Most landlords are responsible landlords and will not serve a section 21 notice without good reason. Abolishing section 21 notices could have unintended consequences. If landlords are forced to use the section 8 route in the future, there could be more tenants with rent arrears judgements against them, rather than simply being evicted using section 21. More tenants could also find themselves with a County Court Judgement, which will impact on their future

credit rating. When a tenant has a rent arrears possession order made against them they could be considered as intentionally homeless and the council will not be obliged to re-house them as they do at present under the section 21 accelerated procedure.

Anecdotal evidence suggests that a number of private landlords are already opting to exit the market as private renting is becoming an increasingly less attractive prospect. Although this will increase the number of properties available to buy, a shrinking private rental market could trigger an increase in private sector rents. Many people are reliant on private renting – if increases in rent make it more difficult for housing benefit/local housing allowance to cover the rent in high cost areas, it could increase homelessness.

We rely on the private rented sector to discharge our homeless duty where we are contracted to provide homeless services. We already struggle to access private rented tenancies and coupled with the shortage of single use accommodation in the area, the proposals could magnify the difficulties. In turn this could impact on the use and increasing cost of temporary accommodation. The difficulties in securing a tenancy for homeless applicants could be compounded for more vulnerable households if we are unable to assure landlords they can recover their property swiftly and without difficulty should the tenancy fail.

Q46: Do you think these proposals will have an impact on local authority duties to help prevent and relieve homelessness?

This is dependent on whether court processes are substantially improved (e.g. through specialist housing courts) to assure landlords that they can swiftly evict a tenant if this becomes necessary. If this assurance cannot be provided, we believe the proposals will impact on the local authority duties as set out below.

If yes, please provide evidence to support this view.

Landlords may become more risk averse and reluctant to accept customers who are perceived to be at higher risk of breaching their tenancy. This will impact on the relief duty if there is a difficulty rehousing applicants in the private rented sector.

It may become harder to negotiate an agreement with the landlord to prevent homelessness, for example, to clear any arrears that have accrued. This could lead to an increase in the number of cases being referred to court for resolution by the landlord and court costs being incurred, thereby causing additional hardship for the tenant.

Q47: Do you think the proposals will impact landlord decisions when choosing new tenants?

Don't know

Please explain further.

Landlords may become far more risk averse when choosing a tenant if the protections for regaining possession become more difficult, particularly if they are unable to protect their assets when things go wrong or they are prevented from using their assets themselves. Private landlords may also choose to convert the use of their property and let it as student accommodation if additional flexibility is being considered for this group. This could mean the supply of private rental properties will decrease, which in the long term could push up rental prices for those remaining in the private sector and place even more demand on social housing.

If landlords become more cautious in their tenant selection process, vulnerable applicants may find it harder to find a place to live.

Q48: Do you have any views about the impact of our proposed changes on people with protected characteristics as defined in section 149 of the Equality Act 2010?

In the public/social housing sector, landlords carry out assessments of its customers, and its own actions, when considering whether to seek possession of a property, regardless of the tenure held by the occupier. This will continue whether or not the proposals to abolish ASTs and/or section 21 notices come into force.

Q49: If any such impact is negative, is there anything that could be done to mitigate it?

We do not have any comments on this aspect of the consultation.

Transition period

Q50: Do you agree that the new law should be commenced six months after it receives Royal Assent?

No

If you answered 'no' to question 50 what do you think would be an appropriate transition period?

Don't know

The supporting reforms including strengthening the grounds for possession under section 8 and swifter court processes, should be implemented first and have had time to bed in. There must be a clear and straightforward path to possession covering all areas of tenant default. This will provide assurance to responsible landlords that they can evict tenants without delay when they have a legitimate reason for doing so.

We strongly call on the government to expedite reforms to the court system alongside the measures being considered in this consultation. Crucially landlords and tenants must have the confidence that the court processes have been substantially improved to speed up access to justice. That means establishing fully resourced and functioning specialist housing courts.

Conclusion

We are comfortable with the proposed repeal of section 21 but it does have significant implications for housing associations. Any reforms must acknowledge the strong social purpose of the sector and its distinct role in providing housing for vulnerable and challenging customers. Improvements to the court system to ensure swifter and more decisive action must have time to bed in before section 21 is repealed.

Get in touch

For further information about Midland Heart or our submission, please email

lina.patel@midlandheart.org.uk

Appendix 1 – List of questions about Midland Heart

Appendix 1 List of Questions

About you

In which capacity are you completing these questions?

Landlord operating on behalf of an organisation

Questions for landlords

As a landlord, which of the following best describes you:

Housing Association (including a provider of supported housing and rent to buy products).

Questions for landlords and letting/property agents

In which region(s) do you let out or manage property?

East Midlands, West Midlands and Milton Keynes

How many rental properties do you own or manage?

More than 100 (we own and manage 33,000 homes)

As a landlord or letting/property agent, please indicate which, if any, of the following statements describes you:

I rent out or manage properties with tenants who have children aged under 18 living with them

Yes

At least one of my tenants is a student at a Higher Educational Institution

Yes

At least one of my tenants is in receipt of housing benefit or the housing element of Universal Credit

Yes

I let out or manage at least one property that is categorised as a House in Multiple Occupation

Yes

At least one of my tenants is on a short-term letting agreement

Yes